

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Waste Management

(New Administrative Regulation)

401 KAR 101:030. Tiered response system.

RELATES TO: KRS 224.01-410

STATUTORY AUTHORITY: KRS 224.01-410

NECESSITY, FUNCTION AND CONFORMITY: KRS 224.01-410 requires the cabinet to establish administrative regulations for the cleanup of methamphetamine contaminated properties. This administrative regulation establishes the assessment of contaminated properties and the tiered response system.

Section 1. Applicability. This regulation shall apply to methamphetamine contaminated properties discovered by Kentucky State Police or local law enforcement on or after July 15, 2008.

Section 2. Assessment of an inhabitable property. (1) The cabinet shall provide the Kentucky State Police and local law enforcement with the initial site assessment form Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria, DEP 1016, January 2009.

(a) Based on the results of the Tier Selection Criteria portion of the form, if the property is determined to be a contaminated property, law enforcement shall assign a tier for cleanup response, pursuant to KRS 224.01-410(5).

1 (b) Once the form has been completed it shall be sent to the cabinet, where it shall be  
2 available for review as an open record.

3 (2) Law enforcement shall consult with the cabinet prior to making a Tier 4  
4 recommendation.

5 (3) A certified contractor may determine that an alternate tier for cleanup response is  
6 more appropriate, based on assessments and testing of the property.

7 (a) If during the cleanup process, the contractor discovers any evidence that would alter  
8 the tier assignment for the contaminated property, the contractor shall do the following:

9 1. Halt all cleanup activities;

10 2. Contact the cabinet within three (3) business days to request any variance from the  
11 initial tier assignment; and

12 3. Provide a written justification for the variance request, and include results of  
13 assessments completed, sample results, photographs, and all other evidence and documentation  
14 supporting the variance request.

15 (b) Once all supporting documentation has been provided to the cabinet, there shall be a  
16 review and decision made by the cabinet to determine if the variance request has been granted.

17 (c) Once the review is complete and decision made all cleanup activities shall resume in  
18 accordance with the decision regarding the tier.

19 Section 3. Classification as a Tier 1. (1) A tier 1 shall include the following:

20 (a) Crime scene investigation shows that the methamphetamine manufacturing or cooking  
21 process was initiated;

22 (b) Limited amounts of reagents or precursors for methamphetamine manufacturing are  
23 present and open;

1 (c) It is uncertain whether a ‘cook’ was completed;

2 (d) The investigation by the police finds:

3 1. One (1) or two (2) anhydrous ammonia “Nazi” ‘cooks’ were completed; and

4 2. Less than two (2) ounces of methamphetamine was produced per production event;

5 (e) The investigation shows methamphetamine production lasted less than three (3) days;

6 or

7 (f) Minor spills and staining observed on surfaces near the suspected cooking location.

8 Section 4. Classification as a Tier 2. (1) A tier 2 shall include the following:

9 (a) Crime scene investigation finds that methamphetamine, reagents, or precursors were  
10 produced;

11 (b) Police investigation finds:

12 1. One (1) or two (2) red phosphorus (Red-P); or

13 2. a. Three (3) to four (4) “Nazi” method ‘cooks’ may have been completed; and

14 b. Less than two (2) ounces of methamphetamine was produced per production event;

15 (c) The police investigation shows methamphetamine production lasted longer than three  
16 (3) days, but less than two (2) weeks; or

17 (d) Spills and staining observed in multiple areas of the structure.

18 Section 5. Classification as a Tier 3. (1) A tier 3 shall include the following:

19 (a) Investigation of the crime scene shows that numerous Red-P or “Nazi” ‘cooks’, or  
20 precursors and reagent production have occurred;

21 (b) The investigation suggests each cook that was completed could yield more than two  
22 (2) ounces but less than one (1) pound of methamphetamine per production event;

(c) The investigation suggests methamphetamine production was conducted over a period of two (2) weeks to several months;

(d) Moderate to severe spills and staining observed in the cooking areas and throughout the structure;

(e) Investigation shows releases outside the structure observed including:

1. Burn pits;

2. Open dumps; and

3. Outside cooking areas.

(f) A property where the method for methamphetamine production was determined to be the P2P/Methylamine method;

(g) A property with re-occurring 'cooks'; or

(h) A property where there is insufficient evidence to complete the Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria (TAS), DEP 1016, January 2009.

Section 6. Classification as a Tier 4. (1) A tier 4 shall include the following:

(a) Investigation of the property by the police suggests that the lab is capable of producing large quantities, greater than one (1) pound of methamphetamine, reagents, or precursors during a production event;

(b) Investigation shows severe environmental effects outside the structure due to potentially large quantities of hazardous materials dumped or released, or drummed and buried wastes discovered on the property;

(c) Investigation suggests methamphetamine production was conducted longer than two (2) weeks to several months; or

(d) Spills and staining inside and outside the structure.

1           (2) Law enforcement agencies shall consult with the cabinet prior to making this tier  
2 recommendation.

3           (3) Releases of hazardous substances, pollutants, or contaminants to the environment  
4 shall be subject to the requirements of KRS 224.01-400 and 401 KAR 100:030.

5           Section 7. Incorporation by Reference. (1) “Clandestine Drug Lab Preliminary  
6 Assessment Tier Selection Criteria”, DEP 1016, January 2009 is incorporated by reference.

7           (2) This material may be inspected, copied, or obtained, subject to applicable copyright  
8 law, at the Division of Waste Management, 200 Fair Oaks, 2<sup>nd</sup> Floor, Frankfort, KY 40601, or on  
9 the Division’s website, [www.waste.ky.gov](http://www.waste.ky.gov).

401 KAR 101:030 approved for filing.

---

Date

---

Hank List, Deputy Secretary  
Signing for  
Leonard K. Peters, Secretary  
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks Lane, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 17, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Tim Hubbard, Assistant Director  
Division of Waste Management  
200 Fair Oaks, 2<sup>nd</sup> Floor  
Frankfort, KY 40601  
Telephone: (502) 564-6716 Fax (502) 564-4049  
Email: Tim.Hubbard@ky.gov

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tim Hubbard, Assistant Director

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does:  
This administrative regulation establishes the assessment of contaminated properties and the tiered response system.
  - (b) The necessity of this administrative regulation:  
The administrative regulation is necessary to establish the assessment of contaminated properties and the tiered response system.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes:  
This administrative regulation conforms to the authorizing statutes by establishing the assessment of contaminated properties and the tiered response system.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:  
This administrative regulation will assist in the assessment of contaminated properties and the tiered response system
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation:  
This is a new administrative regulation.
  - (b) The necessity of the amendment to this administrative regulation:  
This is a new administrative regulation.
  - (c) How the amendment conforms to the content of the authorizing statutes:  
This is a new administrative regulation.
  - (d) How the amendment will assist in the effective administration of the statutes:  
This is a new administrative regulation.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:  
This administrative regulation will help in determining the appropriate tiered response by Kentucky State Police or local enforcement, who will be completing the Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria form to ensure the appropriate cleanup response.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
  - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:  
The Kentucky State Police and local law enforcement will have to be familiar with the assessment and classification of each of the different tiered response criteria.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):  
There will be no cost to the Kentucky State Police or local law enforcement to implement this regulation. The form is provided by the Division of Waste Management and all information provided on the form is already collected by KSP or local enforcement to provide to USDEA.



- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3):  
No benefit will accrue to the entities identified.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:  
(a) Initially:  
To implement this administrative regulation it will cost the division between \$12,000.00-\$12,500.00.  
(b) On a continuing basis:  
To implement this administrative regulation on a continual basis it will cost the division between \$8,000.00-\$8,500.00. This does not include any clean up activities or cost to the state.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:  
There are no fees associated with this administrative regulation.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:  
There are no fees associated with this administrative regulation.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:  
There are no fees associated with this administrative regulation.
- (9) TIERING: Is tiering applied? (Explain why or why not)  
Tiering is applied to this regulation. The least harmful tier of methamphetamine contamination to human health is a tier 1 and the most harmful is a tier 4 as the potential levels of contamination are expected to increase with the higher tiers.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 101:030

Contact Person: Tim Hubbard, Assistant Director

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?  
Yes   x   No         
If yes, complete questions 2-4.
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?  
Kentucky State Police, local law enforcement agencies, Cabinet for Health and Family Services Department for Public Health, and local health departments will be impacted.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.01-410
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?  
This is the tier response system regulation and should not generate revenue.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?  
This is the tier response system regulation and should not generate revenue.
  - (c) How much will it cost to administer this program for the first year?  
To implement this administrative regulation it will cost the division between \$12,000.00-\$12,500.00.
  - (d) How much will it cost to administer this program for subsequent years?  
To implement this administrative regulation on a continual basis it will cost the division between \$8,000.00-\$8,500.00.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## DETAILED SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

I. This administrative regulation incorporates by reference the “Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria”, DEP 1016, January 2009 form. This form is used by Kentucky State Police and local law enforcement when a methamphetamine contaminated property is discovered. This document provides for the assessment of the property and assigns a tier for the appropriate cleanup.

This document is 2 pages.